

House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 127

HOUSE BILL 2381

AN ACT

AMENDING SECTIONS 49-352, 49-353, 49-354 AND 49-358, ARIZONA REVISED
STATUTES; RELATING TO POTABLE WATER SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-352, Arizona Revised Statutes, is amended to
3 read:

4 49-352. Classifying systems and certifying personnel;
5 limitation

6 A. The department shall establish and enforce rules for the
7 classification of systems for potable water and certifying operating
8 personnel according to the skill, knowledge and experience necessary within
9 the classification. The rules shall also provide that operating personnel
10 may be certified on the basis of training and supervision at the place of
11 employment. The department may assess and collect reasonable certification
12 fees to reimburse the cost of certification services, which shall be
13 deposited in the state general fund. Such rules apply to all public water
14 systems involved in the collection, storage, treatment or distribution of
15 potable water. The rules do not apply to systems that are not public water
16 systems including irrigation, industrial or similar systems where the water
17 is used for nonpotable purposes.

18 B. For THE purposes of this article:

19 1. A public water system is a water system that:

20 (a) Provides water for human consumption through pipes or other
21 constructed conveyances.

22 (b) Has at least fifteen service connections or regularly serves AN
23 AVERAGE OF at least twenty-five persons DAILY for at least sixty days a year.

24 2. A public water system as defined DESCRIBED in paragraph 1,
25 subdivisions (a) and (b) includes any collection, treatment, storage and
26 distribution facilities that are under the control of the operator of a
27 public water system and that are used primarily in connection with the system
28 and any collection or pretreatment storage facilities that are not under the
29 control of the operator of a public water system and that are used primarily
30 in connection with a public water system.

31 3. A service connection does not include a connection to a system that
32 delivers water by a constructed conveyance other than a pipe, if any of the
33 following applies:

34 (a) The water is used exclusively for purposes other than residential
35 uses consisting of drinking, cooking or bathing or other similar uses.

36 (b) The department determines that alternative water is provided for
37 residential or similar uses for drinking and cooking and that the water
38 achieves a level of public health protection that is equivalent to the
39 applicable national primary drinking water regulations.

40 (c) The department determines that the water that is provided for
41 residential or similar uses for drinking, cooking and bathing is centrally
42 treated or is treated at the point of entry by the water provider, a
43 pass-through entity or the user to achieve the level of public health
44 protection that is equivalent to the applicable national primary drinking
45 water regulations.

1 that is equivalent to the applicable national primary drinking water
2 regulations.

3 4. An irrigation district in existence before May 18, 1994 and that
4 provides primarily agricultural service through a piped water system with
5 only incidental residential or similar use is not a public water system if
6 the system or the residential or other similar users of the system comply
7 with paragraph 3, subdivision (b) or (c).

8 5. Persons who receive water through connections that are not service
9 connections pursuant to paragraph 3 are not included in the computation of
10 the number of persons prescribed by paragraph 1, subdivision (b).

11 Sec. 2. Section 49-353, Arizona Revised Statutes, is amended to read:

12 49-353. Duties of director; rules; prohibited lead use

13 A. The director shall:

14 1. Exercise general supervision over all matters related to water
15 quality control of public water systems throughout this state.

16 2. Prescribe rules regarding the production, treatment, distribution
17 and testing of potable water by public water systems, except that such rules
18 shall not apply to irrigation, industrial or similar systems where the water
19 is used for nonpotable purposes. The rules shall COMPLY WITH AT LEAST THE
20 FOLLOWING:

21 (a) THE REQUIREMENTS ESTABLISHED BY THE UNITED STATES ENVIRONMENTAL
22 PROTECTION AGENCY FOR STATE PRIMARY ENFORCEMENT RESPONSIBILITY OF THE SAFE
23 DRINKING WATER ACT, INCLUDING THE REQUIREMENTS OF 40 CODE OF FEDERAL
24 REGULATIONS PARTS 141 AND 142.

25 ~~(a)~~ (b) Require that the plans and specifications for all public
26 water systems, including water treatment plants, distribution systems,
27 distribution system extensions, water treatment methods and devices and all
28 appurtenances and devices for sale to be used in water supplies and public
29 water systems be submitted with a fee for review to the department. The
30 department, in establishing fees authorized by this section, shall comply
31 with title 41, chapter 6. The department shall not set a fee at more than
32 the department's cost of providing the service for which the fee is charged.
33 State agencies are exempt from all fees imposed pursuant to this
34 section. Monies collected from the fees shall be deposited in the water
35 quality fee fund established pursuant to BY section 49-210. The director may
36 require that plans and specifications for public water systems include
37 programs to meet future needs for drinking water and to supply specified
38 minimum quantities of drinking water. The director shall:

39 (i) Require that a new public water system demonstrate that the system
40 possess POSSESSES adequate managerial and financial capacity to operate in
41 compliance with this article and the rules adopted pursuant to this article.

42 (ii) Accept adequate findings of other public authorities regarding
43 the adequate managerial and financial capacity of a public water system to
44 operate in compliance with this article and the rules adopted pursuant to
45 this article.

1 ~~(b)~~ (c) Provide that no public water system, including a water
2 treatment plant, distribution system, distribution system extension, water
3 treatment method or device, appurtenance and device used in water supplies
4 or public water systems be constructed, reconstructed, installed or initiated
5 before compliance with the standards and rules has been demonstrated by
6 approval of the plans and specifications by the department. The rules shall
7 prescribe minimum standards for the bacteriological, physical and chemical
8 quality of water distributed through public water systems. The director of
9 environmental quality may consult with the director of the department of
10 health services in developing these standards.

11 ~~(c)~~ (d) Provide for a simplified administrative procedure for
12 approving structural revisions, additions, extensions or modifications to
13 existing small public water systems for potable water serving a population
14 of three thousand three hundred or fewer persons.

15 ~~(d)~~ (e) Exempt from the plan review requirements of this paragraph,
16 including any requirements for approval to construct or approval of
17 construction, any structural revisions, additions, extensions or
18 modifications to public water systems which are in compliance with the
19 department's rules applicable to those systems or which are making
20 satisfactory progress towards compliance under a schedule approved by the
21 department if either of the following conditions is satisfied:

22 (i) The revision, addition, extension or modification has a project
23 cost of twelve thousand five hundred dollars or less.

24 (ii) The revision, addition, extension or modification is made to a
25 water line which is not for a subdivision requiring plat approval by a city,
26 town or county, and has a project cost of more than twelve thousand five
27 hundred dollars but less than fifty thousand dollars, the design of which is
28 sealed by a professional engineer registered in this state and the
29 construction of which is reviewed for conformance with the design by a
30 professional engineer.

31 ~~(e)~~ (f) Require a notice of compliance with the conditions for
32 exemption upon the completion of any revisions, additions, extensions or
33 modifications completed in accordance with subdivision ~~(d)~~ (e) of this
34 paragraph.

35 ~~(f)~~ (g) Provide for the submission of samples at stated intervals.

36 ~~(g)~~ (h) Provide for inspection and certification of such water
37 supplies.

38 ~~(h)~~ (i) Provide for the abatement as public nuisances of any
39 premises, equipment, process or device, or public water system that does not
40 comply with the minimum standards and rules.

41 ~~(i)~~ (j) Provide for records regarding water quality to be kept by
42 owners and operators of the public water systems and that reports regarding
43 water quality be filed with the department.

44 ~~(j)~~ (k) Provide for appropriate actions to be taken if a water supply
45 does not meet the standards established by the department.

1 (k) (l) Require a public water system to implement a specified
2 program to control contamination from backflow, backsiphonage or cross
3 connection. All such programs shall be consistent with title 41, chapter 16.

4 (l) (m) Require that public water systems identify and provide notice
5 to persons that may be affected by lead contamination of their drinking water
6 where such contamination results from either or both of the following:

7 (i) The lead content in the construction materials of the public water
8 distribution system.

9 (ii) Corrosivity of the water supply sufficient to cause leaching of
10 lead.

11 (m) (n) Provide for permanent relief from water testing and
12 monitoring requirements for public water systems qualifying under the federal
13 safe drinking water act (P.L. 93-523; 88 Stat. 1660; P.L. 95-190; 91 Stat.
14 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

15 3. Develop and implement strategies to assist public water systems in
16 acquiring and maintaining the technical, managerial and financial capacity
17 to operate in compliance with this article and the rules adopted pursuant to
18 this article. Assistance may be provided based on the needs of the water
19 system.

20 B. Pipes and pipe fittings having a lead content in excess of eight
21 per cent and solders and flux having a lead content in excess of two-tenths
22 of one per cent shall not be used in the installation or repair of public
23 water systems or of any plumbing in residential or nonresidential facilities
24 providing water for human consumption which are connected to public water
25 systems. This subsection shall not apply to leaded joints necessary for the
26 repair of cast iron pipes.

27 C. Notwithstanding subsection A, paragraph 2, subdivision (b) (c) of
28 this section, a public water system may construct, reconstruct, install,
29 extend or initiate a water supply system, water treatment plant, distribution
30 system, water treatment method or device, or appurtenance that is used in
31 water supply or in a public water system when the system is out of compliance
32 with standards and rules adopted pursuant to this article only if the
33 construction is necessary to correct the system's noncompliance.

34 D. The provisions of this section and the rules adopted pursuant to
35 this section apply to public water systems as defined DESCRIBED by section
36 49-352, subsection B.

37 Sec. 3. Section 49-354, Arizona Revised Statutes, is amended to read:

38 49-354. Enforcement; violation; classification; compliance
39 orders; judicial review; injunctive relief; civil
40 administrative penalties; civil penalties

41 A. A person who violates this article or a rule adopted pursuant to
42 this article is guilty of a class 2 misdemeanor for each violation. In the
43 instance of a continuing violation, each day a violation continues
44 constitutes a separate offense.

1 B. If the director determines that a person is in violation of this
2 article or a rule adopted pursuant to this article, the director may issue
3 an order requiring compliance immediately or within a specified time
4 period. A compliance order shall state with reasonable specificity the
5 nature of the violation, a time for compliance if applicable and the right
6 to a hearing. The director shall transmit the compliance order to the
7 alleged violator by certified mail, return receipt requested, or by hand
8 delivery. A compliance order becomes final and enforceable in the superior
9 court unless within thirty days after the receipt of the order the alleged
10 violator requests a hearing before an administrative law judge pursuant to
11 title 41, chapter 6, article 10. If a hearing is requested, the order does
12 not become final until the administrative law judge has issued a final
13 decision on the appeal. Except as provided in section 41-1092.08,
14 subsection H, a final administrative decision is subject to judicial review
15 pursuant to title 12, chapter 7, article 6. At the request of the director
16 the attorney general may begin an action in superior court to enforce
17 orders issued under this subsection after an order becomes final.

18 C. If the director determines that a person is in violation of this
19 article or a rule adopted pursuant to this article to implement the
20 requirements contained in 40 CODE OF FEDERAL REGULATIONS PARTS 141 AND 142,
21 INCLUDING the national primary drinking water regulations, the director may
22 issue a compliance order pursuant to subsection B of this section imposing
23 a civil administrative penalty. All penalty amounts shall be calculated
24 as follows:

25 1. If the violator is a public water system that serves more than
26 ten thousand persons, the director may impose a civil administrative
27 penalty of up to one thousand dollars per day per violation up to ten
28 thousand dollars per violation.

29 2. If the violator is a public water system that serves five hundred
30 to ten thousand persons, the director may impose a civil administrative
31 penalty that does not exceed five hundred dollars per day per violation up
32 to five thousand dollars per violation.

33 3. If the violator is a public water system that serves fewer than
34 five hundred persons, the director may impose a civil administrative
35 penalty that does not exceed one hundred dollars per day per violation up
36 to one thousand dollars per violation.

37 D. When determining the amount of a civil administrative penalty
38 pursuant to subsection C of this section, the director shall consider all
39 of the following:

40 1. The size of the public water system.

41 2. Any good faith effort by the public water system to maintain
42 compliance with national primary drinking water regulations.

1 3. The seriousness of the violation.

2 4. Any history of violation of the national primary drinking water
3 regulations.

4 5. Any history of recalcitrance by the violator.

5 6. Any economic benefit resulting from the violation, as an
6 aggravating factor only.

7 7. Any other factor deemed relevant.

8 E. Civil administrative penalties may not be recovered pursuant to
9 subsection C of this section if civil penalties are sought pursuant to
10 subsection G of this section for the same violation.

11 F. All civil administrative penalties obtained pursuant to
12 subsection C of this section shall be deposited, pursuant to sections
13 35-146 and 35-147, in the state general fund.

14 G. In addition to the authority provided in subsection C of this
15 section, the attorney general may, and at the request of the director
16 shall, begin an action in superior court to recover civil penalties in an
17 amount of not more than five hundred dollars per violation per day from any
18 person who violates this article or a rule adopted pursuant to this
19 article. All civil penalties obtained under this subsection shall be
20 deposited, pursuant to sections 35-146 and 35-147, in the state general
21 fund. Civil penalties may not be recovered pursuant to this subsection if
22 civil administrative penalties are sought pursuant to subsection C of this
23 section for the same violation.

24 H. If the director has reason to believe that a person is in
25 violation of this article or a rule adopted or an order issued pursuant to
26 this article or believes that a person is creating an actual or potential
27 endangerment to the public health because of acts performed in violation
28 of this article or a rule adopted pursuant to this article, the director,
29 through the attorney general, may request a temporary restraining order,
30 a preliminary injunction, a permanent injunction or any other relief
31 necessary to protect the public health.

32 ~~I. Immediately after the discovery of a change in the water quality~~
33 ~~compliance status of a water system, the department shall notify the water~~
34 ~~system owner or the water system owner's designated agent of that change~~
35 ~~in compliance status. The department shall provide this notice without~~
36 ~~regard to whether enforcement action is to be taken by the department. By~~
37 ~~July 21, 1998, the department shall be required to notify a water system~~
38 ~~owner or water system owner's designated agent within thirty days of~~
39 ~~discovering any change in compliance status of the system.~~

40 Sec. 4. Section 49-358, Arizona Revised Statutes, is amended to read:

41 49-358. Water system compliance assistance program

42 A. The department shall establish a water system compliance assistance
43 program to assist water systems in complying with standards imposed by
44 federal and state law, rules and regulations. The program shall provide
45 information and technical assistance to water systems. ~~The department shall~~

- 1 ~~develop procedures for qualifying water systems for a waiver from enforcement~~
- 2 ~~under specified conditions as part of the compliance assistance program.~~
- 3 B. The department may contract with a nonprofit organization which
- 4 provides on-site technical assistance to small water systems and which is
- 5 dedicated to preserving and enhancing water quality in Arizona.

APPROVED BY THE GOVERNOR APRIL 30, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2003.

Passed the House March 5, 2003

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Jake Flake
Speaker of the House

Spoman L. Moore
Chief Clerk of the House

Passed the Senate April 23, 2003

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Bennett
President of the Senate

Charmine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

24 day of April, 2003

at 11:08 o'clock A M.

Sandra Ramirez
Secretary to the Governor

Approved this 30 day of

April, 2003,

at 4³⁰ o'clock P. M.

J. N. K.
Governor of Arizona

H.B. 2381

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 1 day of May, 2003,

at 3:16 o'clock P. M.

James K. Brown
Secretary of State